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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/626,162 | 07/24/2003 | Gina Margiotta | | 9721 |

7590

05/09/2005

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| EXAMINER |
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WEINSTEIN, STEVEN L

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| ART UNIT | PAPER NUMBER |
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1761

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/626,162

Applicant(s)

MARGIOTTA, GINA

Examiner

Steven L. Weinstein

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (4,333,974).

In regard to claim 1, Davis discloses a candy holding device for displaying and holding candy comprising a doll, said doll comprising a spherical head and candy holding means (e.g. 74) wherein a first end of the candy holding means holds the candy and a second end of the candy holding means is attached to some part of the doll to represent some simulation e.g. clothing. Thus, applicant is not the first to provide a doll with attached candy wherein the candy simulates some recognizable real-life element associated with the doll. Claim 1 differs from Davis in that claim 1 recites that the candy is attached to the head. As disclosed, applicant attaches the candy to the head to simulate hair. Once it was known (as taught by Davis) to associate candy with a figurine to simulate some recognizable, real-life article and even one that is associated with the figure, the placement of the candy on the head (to simulate hair) or the placement of the candy anywhere else on the figure is seen to have been an obvious matter of choice and/or design. That is, Davis is seen to be a general teaching that one could use the candy to simulate anything one desires. In regard to claim 5, Davis teaches a doll/figurine with torso and legs and a stand attached to at least one leg (Figures 13 and 14).

Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (4,333,974) in view of “Do Fun!” (www.creativehands.net/dofun/floral/rosebud.htm).

Claim 2 recites that the head is comprised of a “topiary ball”. It is not clear what this phrase means nor does the specification define this phrase or even give examples. The word “topiary” is defined in the dictionary as “of or characterized by the clipping or trimming of live shrubs or trees into decorative shapes.” It does not appear that applicant is using a live shrub. From a review of the “Do Fun!” reference, it appears that one can perhaps glean another definition of the word topiary that may be known in the field of arts and crafts. “Do Fun!” refers to a simulation as a “rosebud flower pot topiary”. Clearly, the simulation does not have any living elements and is made of foam and other materials. Therefore, for purposes of examination, the phrase “topiary ball” will be construed to mean a ball used in the making of decorative and/or simulated shapes. The foamed pieces of Davis, including the head, are used to make a decorative shape. Therefore, Davis is considered to show a “topiary ball”. In regard to claim 3, the particular size of the ball (or any other element for that matter) is seen to have been an obvious matter of choice and/or design.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied against claim 2, further in view of Beacon Journal (10/26/02, page E2), Fabric and Home (www.fabric and homebonanza.com/how_to/raffia_doll.htm) and Becker(982,461).

In regard to claim 4, the particular conventional elements used to hold the candy (and simulate the hair) is seen to have been an obvious matter of choice and/or design. It is noted that Do Fun! and Fabric and Home teach that chenille stems are well known arts and crafts materials and Beacon Journal is relied on to show that chenille stems have been used to simulate hair.

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Becker can be relied on as further evidence for employing flexible strip material(#6) to help associate wrapped candy with an article(2) to form a simulation.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in regard to claim 2, further in view of Precious Moments Company (www.pmc Dolls.com/dolls/seven.htm1),

Claim 6 recites that the stand is a flowerpot. As evidenced by Do Fun! and further evidenced by Precious Moments, it is conventional to make simulations of real-life recognizable objects (e.g. flowers and dolls) and support them in flowerpots. To modify Davis and add a flower pot for decoration, future utility, and/or support would therefore have been obvious in view of the art taken as a whole.

The remainder of the references cited on the USPTO 892 reference forms is cited as art of interest to show that the art is replete with simulations made of edible/inedible composite articles.

Any inquiry concerning this communication from the examiner should be directed to Steven L. Weinstein whose telephone number is (571) 272-1410. The examiner can generally be reached on Monday-Friday from 6:30 a.m. to 3:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S.L. Weinstein/dh

April 27, 2005

Steven Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761